

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954-WO-JLW**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**PLAINTIFF'S STATUS
REPORT/STATEMENT OF
POSITION**

Pursuant to the Court's Notice of Hearing setting a hearing on pending motions for May 30, 2023, *see* ECF No. 229, Plaintiff Farhad Azima ("Plaintiff") and Defendants Nicholas Del Rosso and Vital Management Services, Inc. ("Defendants") submit this pre-hearing Plaintiff's Status Report.

1. On May 16, 2023, the Court issued a Notice of Hearing for May 30, 2023, at 10:00 a.m., to address all pending motions in this matter. ECF No. 229.

2. The Court further ordered the parties to "meet and confer and file a joint status report with the Court no later than Friday, May 26, 2023, at 3:00 p.m. regarding whether any issues in relation to said motions have been resolved." ECF No. 229.

3. The following motions^{*} are currently pending before the Court:

- **ECF No. 122** – Defendants’ Emergency Motion to Quash and for Protective Order Regarding Subpoenas to First National Bank of Pennsylvania and First Citizens Bank & Trust Co.;
- **ECF No. 130** – Plaintiff’s Motion to Compel Production of Documents;
- **ECF No. 133** – Motion of Shanahan Law Group to Quash Plaintiff Farhad Azima’s Subpoena to First National Bank of Pennsylvania;
- **ECF No. 136** – Non-Party Dechert LLP’s Motion to Quash Plaintiff’s Subpoena to Testify at Deposition in a Civil Action;
- **ECF No. 142** – Defendant Nicholas Del Rosso’s Motion for Protective Order;
- **ECF No. 144** – Plaintiff’s Motion to Compel Production and Testimony from Third-Party Dechert LLP;
- **ECF No. 150** – Motion [of Non-Party Christopher Swecker and Christopher Swecker Enterprises, LLC] to Quash Plaintiff’s Subpoena Duces Tecum;
- **ECF No. 154** – Defendants’ Motion to Quash and Motion for Protective Order Regarding Plaintiff’s Subpoena to American Express; and
- **ECF No. 188** – Plaintiff’s Motions to Compel Further Deposition Testimony and For An Expedited and Consolidated Hearing and Shortening Response Timeline.
- **ECF No. 196** – Defendants’ Motion for Protective Order and Motion to Quash Second Subpoena to First Citizens Bank
- **ECF No. 198** – Third-Party Craig Evers’s Motion to Quash Subpoena to Produce Documents and for Deposition

^{*}Several motions to seal are also pending before the Court, which are also addressed in this Joint Status Report.

- **ECF No. 205** – Defendants’ Motion to Stay Discovery Pending Ruling on Discovery Motions
- **ECF No. 216** – Defendants’ Motion for Protective Order Regarding Rule 30(b)(6) Deposition of Vital Management Services, Inc.
- **ECF No. 221** – Plaintiff’s Motion to Withdraw Attorney Appearance
- **ECF No. 225** – Third-party First Citizens Bank & Trust Co.’s Motion for Protective Order

4. The Court heard the motions filed at ECF Nos. 122, 130, 136, 142, 144, 150, 154, and 188 at the hearing on March 7, 2023.

5. In addition, the parties have filed a number of Motions to Seal which remain pending. These are:

- **ECF No. 99** – Defendants’ Motion to Seal in connection with ECF No. 97 Motion for Protective Order
- **ECF No. 108** – Plaintiff’s Motion to Seal in connection with ECF No. 105 Response to Defendants’ Motion for Protective Order
- **ECF No. 128** – Plaintiff’s Motion to Seal in connection with ECF No. 125 Response to Defendants’ Emergency Motion to Quash Subpoena and for Protective Order
- **ECF No. 158** – Defendants’ Motion to Seal in connection with ECF No. 157 Response in Opposition to Plaintiff’s Motion to Compel Discovery

- **ECF No. 164** – Plaintiff’s Motion to Seal in connection with ECF No. 163 Reply to Response to Plaintiff’s Motion to Compel Discovery
- **ECF No. 168** – Plaintiff’s Motion to Seal in connection with ECF No. 167 Response in Opposition to Defendant’s Motion for Protective Order
- **ECF No. 173** – Plaintiff’s Motion to Seal in connection with ECF No. 172 Response to Third-Party Christopher Swecker’s Motion to Quash Subpoena
- **ECF No. 181** – Defendants’ Motion to Seal in connection with ECF No. 179 Reply to Response to Defendants’ Motion for Protective Order
- **ECF No. 202** – Plaintiff’s Motion to Seal in connection with ECF No. 201 Response in Opposition to Defendants’ Motion to Quash Subpoena and for Protective Order
- **ECF No. 210** – Defendants’ Motion to Seal in connection with ECF No. 209 Reply to Response to Defendants’ Motion to Quash Subpoena and for Protective Order
- **ECF No. 213** – Plaintiff’s Motion to Seal in connection with ECF No. 212 Response to Third-Party Craig Evers’ Motion to Quash Subpoena to Produce Documents and Testify at Deposition
- **ECF No. 218** – Defendants’ Motion to Seal in connection with ECF No. 216 Defendants’ Motion for Protective Order

6. The Court heard the Motions to Seal at ECF Nos. 99, 108, 128, 158, 164, 168, 173, and 181 at the March 7, 2023 hearing.

7. On March 28, 2023, the parties submitted a Status Update to the Court regarding the then-pending Motions to Seal. *See* ECF No. 195. The parties' positions on the Motions to Seal listed in ECF No. 195 have not changed.

8. The Motions to Seal filed *after* the March 28, 2023 Status Update—which include ECF Nos. 202, 210, 213, and 218—all seek sealing of excerpts of the transcript of the deposition of Defendant Nicholas Del Rosso, parts of which Defendants designated as confidential pursuant to the Protective Order. Defendants stand on their confidentiality designation, but Plaintiff does not agree that the excerpts which Defendants have designated confidential should be designated confidential and/or sealed.

9. Pursuant to the Court's directive, Counsel for the parties conferred about the pending motions and related issues via email on May 23 and 24 and via video conference on May 25, 2023. As of the conclusion of that meeting the parties' respective positions relative to the pending motion and conduct of the hearing are:

a) Plaintiff's Position:

Plaintiff believes that the Court can and should deny all outstanding discovery motions¹ as moot once it rules on two threshold issues. The two threshold issues regarding the scope of discovery that Plaintiff urges the Court to address at the hearing and/or in its decision are: (1) the temporal scope of discovery; and (2) the substantive scope of discovery. Once the court rules on these two issues, the parties can proceed with discovery and hopefully not further burden the court with subsequent motions.

There are two claims pending: a claim under state law for misappropriation of trade secrets and a conspiracy claim. Plaintiff's position regarding the pending North Carolina claim for misappropriation of trade secrets, is that discovery is necessary as to all elements of that claim including, without limitation, facts related Plaintiff's allegation that his trade secrets were improperly acquired by Defendants and then published. Regarding the time period for permissible discovery, Plaintiff alleges that his trade secrets were acquired by Defendants between 2014 and 2018, leading up to the improper disclosures in 2018 and 2019, and that the appropriate time period to discover those facts, therefore, starts in 2014. Plaintiff's position regarding the pending conspiracy count is that discovery is necessary as to all elements of the conspiracy claim, including formation—which occurred between 2014

¹ ECF Nos 122, 130, 133, 136, 142, 144, 150, 154, 188, 196, 198, 206, 216, 221, 225.

and 2016, and as to all acts in furtherance of the conspiracy, which occurred between 2014 and the present date, including conduct subsequent to the alleged publication that may establish consciousness of guilt. Finally, discovery is warranted regarding all of Defendants' asserted affirmative defenses, unless specifically withdrawn.

By ruling on those two threshold issues, the Court will give the Parties significant guidance from which discovery can proceed. Plaintiff believes and urges that once the Court rules, it can and should deny as moot all pending discovery-related motions between the parties (except the pending motions to seal), and should direct the parties to proceed with discovery, and reassess all prior positions, including privilege assertions, what information must be produced to support privilege assertions, and whether any third-party subpoenas require amendment—all in light of the Court's discovery scope ruling.

b) Defendants' Position:

Despite conferring and attempting to agree, the parties could not agree upon appropriate language for Defendants' position statement in connection with the pending motions. Plaintiff understands that Defendants will file separately. If their filing mirrors that which has been proposed to Plaintiff, then Plaintiff rejected it for purposes of a joint filing because Plaintiff believes it to be designed intentionally to confuse, create further unnecessary delay,

and even mislead, the Court relative to the pending motions. Plaintiff refuses to be a party to such filing.

Respectfully submitted, this, the 26th day of May, 2023.

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**IN THE UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

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This, the 26th day of May, 2023.

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